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Committee of Experts on International Cooperation in Tax Matters

Report on the fourteenth session (3-6 April 2017)

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Note

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 27/209, the fourteenth session of the Committee of Experts on International Cooperation in Tax Matters was held in New York from 3 to 6 April 2017.

2. The fourteenth session of the Committee was attended by 23 Committee members and 154 observers.

3. The provisional agenda and documentation for the fourteenth session, as adopted by the Committee (E/C.18/2017/1), was as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
    (a) Issues related to the updating of the United Nations Model Double Taxation Convention between Developed and Developing Countries:
        (i) Article 8 (Shipping, inland waterways transport and air transport): changes to the Organization for Economic Cooperation and Development Model Tax Convention on Income and on Capital relating to international traffic and possible similar changes to the United Nations Model Double Taxation Convention;
        (ii) Base erosion and profit-shifting:
            a. Possible changes to articles and commentaries, including the ordering and numbering of provisions;
            b. Possible treaty revisions to deal with subsequent changes in the law;
        (iii) Article 12 (Royalties): possible amendments to the Commentary on article 12 in relation to:
            a. Industrial, commercial or scientific equipment;
            b. Software-related payments;
    (b) Other issues:
        (i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries — information from the Coordinator on the editorial process;
        (ii) Extractive industries handbook:
            a. Draft guidance note on selected transfer pricing issues in the extractive industries (in cooperation with the Subcommittee on Article 9 (Associated enterprises));
            b. Update on the editorial process;
        (iii) Taxation of development projects;

(iv) Mutual agreement procedure — dispute avoidance and resolution, including possible updates to the United Nations Model Double Taxation Convention;

(v) Capacity-building;

(vi) Environmental tax issues of relevance to developing countries;

(vii) Other matters for consideration, including suggestions for Committee procedures and future Committee work.

4. Provisional agenda for the fifteenth session of the Committee (17-20 October 2017, Geneva).

5. Adoption of the report of the Committee on its fourteenth session.

Chapter II
Organization of the session

Opening of the fourteenth session and adoption of the agenda

4. The fourteenth session of the Committee was opened on 3 April 2017 by the Chair of the Committee, Armando Lara Yaffar. He then invited the Director of the Financing for Development Office of the Department of Economic and Social Affairs, Alexander Trepelkov, to speak on behalf of the Department.

5. The Director of the Financing for Development Office stressed the significance of the final meeting of the current membership of the Committee, highlighting the Committee's main achievements in accordance with its mandate over the past four years, including: (a) the updated version of the United Nations Practical Manual on Transfer Pricing for Developing Countries; (b) the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries; and (c) the new Handbook on Selected Issues in the Taxation of the Extractive Industries for Developing Countries. He also highlighted the expected conclusion of the revision of the new version of the United Nations Model Double Taxation Convention between Developed and Developing Countries.

6. The Director announced that the revision of the United Nations Practical Manual on Transfer Pricing for Developing Countries was complete and that a digital copy of the new version would be officially launched and distributed to all participants in the one-day special meeting of the Economic and Social Council on international cooperation in tax matters on 7 April, at which the manual was to be officially launched.

7. The Director provided the Committee members with an update on the work of the Platform for Collaboration on Tax, including the work of the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the United Nations and the World Bank on toolkits to assist developing countries with some current practical tax issues.

8. The agenda was adopted, but it was considered that the next membership of the Committee should hold further discussions on the Committee's procedures. The discussion on article 12 (Royalties) in relation to software-related payments and on the taxation of development projects would be largely deferred until the fifteenth session, allowing for further consideration before decisions could be made by the next membership. Johan de la Rey was unanimously elected as Rapporteur for the session.

9. The summary in chapter III of the present report reflects the discussions of all agenda items considered at the fourteenth session, not necessarily in the order of discussion.

Chapter III
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

10. The Coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing, Stig Sollund, provided an update on the editing of the United Nations Practical Manual on Transfer Pricing for Developing Countries, highlighting that a digital version would be made available during the launch of the manual at the one-day special meeting of the Council on international cooperation in tax matters on 7 April 2017. The paper version would be produced later in the year.

11. The Coordinator recommended that the next membership of the Committee should continue to update the manual and make it even more practical. He emphasized that the practicality of the manual could be improved by drawing upon, inter alia, the feedback received from tax officials participating in the United Nations capacity development programme on international tax cooperation or by working in cooperation with research institutes active in the area of transfer pricing. The Coordinator recommended including more practices of developing countries and, in particular, focusing on reflecting the legislative and other experiences of the least developed countries. The Subcommittee was thanked for its work.

B. Extractive industries handbook: Draft guidance note on selected transfer pricing issues in the extractive industries (in cooperation with the Subcommittee on Article 9 (Associated enterprises))

12. During the thirteenth session of the Committee, it had been agreed that a small group would be formed and coordinated by the Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Eric Mensah, and the Coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing, Mr. Sollund, to produce a guidance note on transfer pricing issues in the extractive industries. At the fourteenth session, the Coordinator of the Subcommittee on Article 9 (Associated enterprises): Transfer Pricing presented the guidance note for consideration and approval by the Committee and potential inclusion in the extractive industries handbook.

13. The Coordinator explained that the note was divided into two parts. Part I is a table reflecting the transfer pricing issues that often arise in the extractive industries in each phase of the value chain. The issues are categorized as relevant to the oil and gas industry, the mining industry or both, and comments are provided as to whether the identified issue is a tax issue that should be addressed by the tax administration of the relevant country, with advice on how to address and resolve the issue.

14. In part II of the note, several case studies are presented, some of which resulted from discussions with tax inspectors working in developing countries. The Coordinator emphasized that the note did not aspire to provide comprehensive transfer pricing guidance for the extraction industries, but should serve as a useful summary and checklist of selected issues that commonly arise. He recommended that the extractive industries guidance note and the United Nations Practical Manual on Transfer Pricing for Developing Countries be consulted together.

15. The Committee approved the contents of the note, which would be added to the extractive industries handbook after editing.

C. Environmental tax issues of relevance to developing countries

16. A representative of the Swedish Ministry of Finance, Ingela Willfors, presented a paper on carbon taxation — an instrument for developing countries to raise revenues and support national climate policies, prepared in cooperation with other representatives of the Ministry of Finance, Susanne Åkerfeldt and Henrik Hammar, with input from a representative of IMF, Ian Parry, a representative of Shell International BV, An Theeuwes, and Tatiana Falcão of the secretariat, for discussion at the fourteenth session. Ms. Willfors highlighted the timeliness of the agenda item, which provided an option for resource mobilization in a cost-effective way.

17. Ms. Falcão noted that, in the paper, environmental taxation was presented in the context of the Paris Agreement on climate change and other commitments made under the United Nations Framework Convention on Climate Change, and a broad overview was provided of the policy considerations to be explored by developed and developing countries should they wish to introduce environmental taxes. She emphasized the need for a longer and more detailed paper outlining existing country experiences across the globe and introducing policy options for consideration by the next membership of the Committee.

18. Following the presentation, the Committee requested the secretariat to work with a small group of experts to produce a longer paper for consideration by the next membership of the Committee. The Committee thanked the authors of the paper and recommended that the issue be further considered by the next membership of the Committee.

D. Issues related to the updating of the United Nations Model Double Taxation Convention between Developed and Developing Countries

19. The Secretary of the Committee, Michael Lennard, initiated the discussion on this item by informing Committee members that, although a schedule had been proposed for the updating of the United Nations Model Double Taxation Convention between Developed and Developing Countries to be finalized by the end of June, with an event for its official launch, the secretariat had been approached by a number of members, who suggested postponing the official launch to coincide with the fifteenth session of the Committee, in view of the editorial work still to be completed. The secretariat supported that option, which would provide more time for the secretariat to work on the editing process, between July and October. The Secretary highlighted that, were that option to be pursued, all the substantial elements would have to be agreed upon by the current membership of the Committee by June at the latest, with only the launch event being postponed to October. The 2017 update of the Model Convention would be launched in October during the week of the fifteenth session, but would not be an item for substantive discussion at that session. The new membership of the Committee would have the chance to update the Model Convention further during its four-year term.

20. The Committee requested the secretariat to work until October with the following small group of members, acting in their personal capacities, in view of their involvement in the revision of the Model Convention: Carmel Peters, Henry John Louie, Pragya Saksena, Eric Mensah, Mr. de la Rey and Liselott Kana (with the recognition that Ms. Kana may involve a consultant, Brian Arnold, in the

discussions of the group insofar as they pertain to his areas of expertise). The Coordinator of the Subcommittee on Article 8, Cezary Krysiak, offered to assist with respect to changes related to transport, if needed, and Ms. Willfors volunteered to assist with respect to updates related to base erosion and profit shifting, if needed.

21. The Secretary emphasized that the substantive elements of the new version of the Model Convention would have to be agreed upon at the very latest by 30 June, following the written procedure for any further agreement outside the sessions of the Committee. Only editorial non-substantive modifications could be made after June. The steering group formed after June would have the function of overseeing the editorial changes made by the secretariat and verifying that no change had been made to the substance of the Model Convention, nor any departures from the decisions taken by the current membership of the Committee.

22. The Committee agreed that the event for the official launch of the updated version of the Model Convention would not be included in the agenda for the fifteenth session of the Committee, because it would not be appropriate for the next membership of the Committee to discuss and examine the updated version.

E. Article 12 (Royalties)

23. The issue of the taxation of royalties, which had been included in the agenda of the twelfth session of the Committee, had been deferred until the fourteenth session to allow the Subcommittee on Royalties an opportunity to meet.

24. The Subcommittee held its first meeting in February, in Brussels. Ms. Saksena thanked the European Commission for its support and, in particular, Franco Roccatagliata for his personal involvement.

25. Ms. Saksena recalled the Subcommittee's mandate and emphasized that, after a very extensive discussion, with technical clarifications provided by a representative of Microsoft, Bill Sample, the Subcommittee had been unable to reach a final decision with respect to the characterization of software-related payments. The Subcommittee had, therefore, decided to issue a recommendation for the next membership of the Committee to work on the issue and review the commentary on article 12 in respect of software-related payments.

26. Ms. Saksena highlighted that the Subcommittee had drafted four new paragraphs for the commentary on article 12 to address the characterization of industrial, commercial and scientific equipment and explained to the Committee members the general intent of the proposed paragraphs.

27. The first issue discussed with respect to the proposed new paragraphs was whether all criteria in the list immediately following proposed paragraph 13.3 would have to be satisfied or whether the observance of a few criteria would be sufficient for a lease to be classified as a finance lease. Ms. Saksena stressed that the list had been developed following International Accounting Standard 17 and that, in that standard, no conjunction was used at the end of the list of criteria that would lead to a lease being classified as a finance lease. Given that, pursuant to the standard, those criteria could be applied in combination or individually, she suggested removing all references to "and" and "or" in the list following proposed paragraph 13.3. The Committee approved that suggestion and the paragraph.

28. The issue of the approaches outlined in paragraph 13.4 was submitted to a vote. The majority of members were of the opinion that the payments made by a customer to a satellite operator should be considered as transmission services to which article 7 or the new article 12A would apply. The minority view was that such

payments should be considered as royalties and, therefore, characterized as the leasing of industrial, commercial or scientific equipment.

29. The Committee approved the proposed addition of paragraphs 13.1 to 13.4 to the commentary on article 12.

30. The members of the Subcommittee were thanked, and the Committee acted on the recommendation of the Subcommittee for the next membership of the Committee to review article 12 in respect of software-related payments by including an item on the matter in the provisional agenda for the fifteenth session.

F. Article 12A (Fees for technical services)

31. The Coordinator of the Subcommittee on Taxation of Services, Liselott Kana, introduced this item. It was proposed and agreed that the new article would be numbered 12A, without a space between the number and the letter, in contrast to cases in which an article had two alternatives, such as articles 23 A and 23 B, with spaces.

32. One observer, commenting on the revised commentary on article 12A (Fees for technical services), noted that, as it is now stated in paragraph 47 of the commentary on paragraph 4 of article 12A, article 12A takes precedence over article 14. It was his understanding that it would be better for a source country to impose tax pursuant to article 14 if the service was performed for more than 183 days, because, in that case, under article 14, income is taxed in accordance with the national law of the source country, according to which a higher tax rate is likely to be applied than the tax rate agreed by the contracting States under article 12A. Mr. Arnold agreed with the observer's point of view, but clarified that the rule in paragraph 4 was a rule common to all articles of specific application under the Model Convention. Changing article 12A would require a revision of articles 10, 11 and 12, and it was considered that it would be too late in the process to do so. Mr. Arnold recognized that the point might be further examined by the next membership of the Committee.

33. Following that explanation, all changes proposed in the revised commentary on article 12A (Fees for technical services) were approved by the Committee members.

34. The Coordinator invited Mr. Arnold to explain the changes to the text of article 12A (6). The Committee members approved the changes.

35. The proposed editing changes set out in the paper on the proposed addition to the commentary on article 12A (Fees for technical services) were approved by the Committee members.

36. Changes to paragraph 2 of article 23 A (Exemption method) and a revision of article 24 (Non-discrimination) were proposed in the paper on the amendments to the articles of the United Nations Model Convention consequential on the addition of article 12A (Fees for technical services). The changes, which were mostly to include updated cross-references in those articles, were approved by the Committee.

37. Ms. Kana, Mr. Arnold and others involved in the Subcommittee were congratulated on completing this important new provision.

G. Base erosion and profit shifting

Work of the Subcommittee on Base Erosion and Profit Shifting for Developing Countries

38. The Coordinator of the Subcommittee on Base Erosion and Profit Shifting for Developing Countries, Carmel Peters, introduced the topic by identifying the following issues and papers that would be discussed in relation to base erosion and profit shifting: (a) a new paragraph 9 of article 29 (Entitlement to benefits), presented by Mr. Arnold; (b) a proposed new commentary on article 1, presented by the Coordinator and Mr. Arnold; and (c) proposed changes to article 5 and consequential changes resulting from such changes.

New paragraph 9 of article 29 (Entitlement to benefits)

39. Mr. Arnold was invited to introduce a paper containing the commentary on article 29 (9). He stated that no substantive changes had been made to the substance of the provision since the thirteenth session. The proposed changes were mainly editorial in nature. The main development was the introduction of the specific text that would feature in the new commentary on the articles of the OECD Model Tax Convention on Income and on Capital in paragraph 9.

40. Mr. Arnold drew the Committee's attention to example O, which refers to the application of the existing "place of effective management" test in article 4 (3), which is the tie-breaker rule for dual resident entities. He explained that the rule was being changed under the new version of the commentary on the United Nations Model Convention to a different rule, whereby it is up to the competent authorities of each of the contracting States to endeavour to establish residency by mutual agreement. The existing rule would, however, still apply under many bilateral treaties. The Committee decided to remove the example from the new version of the commentary on the Model Convention.

41. With respect to the nomenclature adopted for the paragraph, Mr. Arnold and Mr. Louie agreed that, given that the term "principal purpose test" was most widely known, paragraph 9 should be so referred to in the commentary.

New commentary on article 1

42. The Coordinator introduced the paper relating to the proposed new commentary on article 1, highlighting that article 1 would now have three new paragraphs: paragraph 1 would be the paragraph that is included in the existing version of the Model Convention; paragraph 2 would be the fiscally transparent provision previously approved by the Committee; and paragraph 3 would be the saving clause, which had been discussed in the past two sessions of the Committee. Given that this provision had not changed since the thirteenth session of the Committee, it did not require further discussion. The Coordinator therefore proposed that the Committee discuss only the newly proposed commentary text.

43. Mr. Arnold highlighted that the commentary on article 1 was still pertinent to treaties in which the new paragraph 9 (principal purpose test) of article 29 had not been incorporated. The commentary on the United Nations Model Convention was substantially different to the commentary on the OECD Model Convention. Many of the nuances that had existed prior to the revision had therefore been retained. Furthermore, he emphasized that a reference to special tax regimes was included in paragraph 115.

44. Mr. Louie was invited to provide an explanation with respect to the insertion of a definition of "special tax regime" in article 3 (1) of the United Nations Model

Convention. The text was based on the rules currently in force in the Model Income Tax Convention of the United States of America, which cover major changes in the tax system of one or both contracting States. The provision would apply if, for example, a contracting State were to approve a drastic reduction in the income tax rate or a drastic change were to be made in a country's tax system, such as shifting from taxation on a worldwide basis to taxation on a territorial basis. The rules would require countries to reassess their entitlement to treaty benefits and might at times lead to the exchange of diplomatic notes on the interpretation of certain provisions.

45. The Committee agreed that due reference should be made to the new article 12A (Fees for technical services) whenever reference is made to interest and royalties.

Changes to article 5 (Permanent establishment)

46. When commenting specifically on the paper in which changes related to article 5 are suggested, the Coordinator highlighted that the unresolved issues from the thirteenth session, which had since been the subject of further analysis by the Subcommittee, were as follows:

(a) A minority view in relation to the expression "the same or connected project" in article 5 (3) (b), for the countries that prefer to keep that expression;

(b) The replacing of paragraph 12 of the commentary on article 5 with new paragraphs 12 and 12.1;

(c) The broadening of article 5 (3) (b) to mean that the services permanent establishment rule applies in some circumstances, instead of the new article 12A on the taxation of fees for technical services;

(d) The introduction of a new paragraph 19 to the commentary on article 5 (4), in which the interrelation between the new narrowed-down concept of "preparatory and auxiliary" situations (for those that decide to narrow down the concept) and the limited force of attraction rules in article 7 is discussed. One of the issues was whether to keep the proposed new language in paragraph 19, as previously requested by the Committee members during the thirteenth session of the Committee, or to mention the discussion in the report only;

(e) The proposal to include a new minority view with respect to the dependent agent permanent establishments in paragraph 24 of the commentary, following the Committee's earlier decision to follow the OECD proposal on dependent agent permanent establishments.

47. The Coordinator also introduced some outstanding issues related to:

(a) Article 5 (6) on insurance and reinsurance and proposed changes to that provision;

(b) Article 13 (4) and (5) on the taxation of capital gains.

48. She highlighted that all the proposed changes to article 5 were prospective and did not affect the interpretation of former provisions.

49. The Coordinator reminded the Committee of its long discussion during the thirteenth session regarding the services permanent establishment rule in article 5 (3) (b). She noted that, in the light of past discussions, the reference to "the same or a connected project" in subparagraph 3 (b), which may have broadened the application of the article, had been removed. In the commentary, that change was addressed, and a minority view with respect to that change recorded. Consequently,

paragraph 12 of the commentary on article 5 (3) had been substituted by two paragraphs, now numbered 12 and 12.1.

50. In discussing the application of article 5 (4), the Committee noted that some members saw a connection, in the nature of an overlap, between the changes made in 2017 to article 5 (4) and the limited force of attraction rule in article 7. Those members queried whether, with the new paragraph 4 in article 5, the provisions of article 7 (1) were still needed. However, the Committee saw no need to revise article 7 in the light of the change to article 5 (4), owing, in particular, to the different coverage of article 5 (definition of "permanent establishment") and article 7 (attribution of profits).

51. A minority view was recorded in paragraph 24 of the commentary on article 5 (5), following the decision made by the Committee during its thirteenth session, to include the sentence "contracts that are routinely concluded without material modification by the enterprise" in subparagraph 5 (a). The opinion of some Committee members that this phrase may have the effect of unnecessarily narrowing the scope of the new paragraph 5 was also recorded in paragraph 24. Those members had been concerned that the phrase may encourage enterprises to claim that the condition was not met and to artificially avoid having a permanent establishment. It was highlighted in paragraph 24 that the members sharing this concern may prefer to omit the phrase.

52. The Coordinator addressed the policy implications of removing the carve-out for reinsurance in article 5 (6). The substantive proposal was to remove the phrase "except in regard to reinsurance" currently included in paragraph 6. Some members considered that reinsurance was a form of insurance and that such an exception created tax avoidance opportunities. Other members took the view that the business model for reinsurance was completely different to the model for insurance. They considered the exemption necessary in order to allow the reinsurance business to operate effectively.

53. The Coordinator summarized the discussion by suggesting that the general consensus seemed to be to keep the carve-out for reinsurance. Nevertheless, she suggested retaining a proposed new paragraph 30 for the commentary, in which an alternative solution was provided to address concerns that countries had in relation to insurance. This would allow source taxation of insurance premiums in the absence of a permanent establishment.

54. Other members, however, opposed all the modifications proposed by the Coordinator on reinsurance, arguing that the Committee was not yet sufficiently informed on the nature of reinsurance or the concerns of the countries that had made the original proposal to delete the carve-out for reinsurance. The issue was submitted to a vote, and the majority of the Committee members voted to keep the article as it is. As a result, article 5 (6) and the relevant commentary will remain unchanged in the 2017 update. It was agreed that the issue should be added to the provisional agenda of the next session of the Committee.

55. The outcome of the Group of 20/OECD Action Plan was discussed in relation to article 13 (4), which was considered to combine the best elements of the existing provisions on countering abuses in the United Nations and OECD Model Conventions. The Committee agreed to replace paragraph 4 of the United Nations Model Convention in its entirety with the new paragraph 4 that was recommended in the final report on action 6 of the Group of 20/OECD Action Plan and that will be included in the 2017 version of the OECD Model Tax Convention:

> "4. Gains derived by a resident of a contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may

be taxed in the other contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in article 6, situated in that other State."

56. The Coordinator and the other members of the Subcommittee were thanked for their work on issues related to base erosion and profit shifting.

Article 13 (Capital gains)

57. Ms. Saksena introduced another aspect of the topic by presenting it in the context of the discussions under the Group of 20/OECD Action Plan on Base Erosion and Profit Shifting. Since that project had been undertaken with the OECD Model Convention in mind, she suggested that it may be appropriate for the Committee to consider treaty abuse concerns that arise solely in the context of the United Nations Model Convention, owing to its unique characteristics, when implementing the changes suggested in the final report on action 6 of the Group of 20/OECD Action Plan.

58. Ms. Saksena noted that, in paragraphs 41 to 43 of the final report on action 6, the issue of transactions that circumvent the application of article 13 (4) of the OECD Model Convention had been addressed. Unlike the OECD Model Convention, in article 13 (5) of the United Nations Model Convention, certain taxing rights are granted to the country of source for taxation of capital gains from shares. Although article 13 (4) addresses abusive transactions with the purpose of avoiding tax in respect of article 13 (1), it does not prevent similar abusive transactions in respect of taxation of capital gains under paragraph 5. Since the nature of transactions that circumvent taxation of capital gains under paragraphs 1 and 5 is exactly the same, Ms. Saksena proposed that the anti-abuse provision in paragraph 4 be extended to paragraph 5 of article 13.

59. Ms. Saksena proposed two options for consideration by the Committee. The first option would be to add a sentence to the end of article 13 (4), as discussed in the paper on proposed changes in article 13 (4) and (5) of the United Nations Model Convention to prevent the granting of treaty benefits in inappropriate circumstances. Such an amendment would extend the safeguards against treaty shopping and treaty abuse set out in paragraph 4 to gains covered under paragraph 5. The second option was to add the sentence to the commentary, rather than the article itself.

60. Some members were of the opinion that the suggested changes to paragraph 4 would generate greater tax policy concerns, including that the rule might apply to non-abusive as well as abusive tax structures. Other members saw the logic of extending paragraph 4 to cases covered by paragraph 5 and considered that paragraph 5 could be circumvented through a simple holding structure.

61. In the light of the different points of view and the time constraints, as well as the likely need to discuss the issue at the Subcommittee level, it was agreed that the issue should be added to the provisional agenda of the next session of the Committee. No changes were made to article 13 (5) by the Committee.

New article 29 (Entitlement to benefits) of the United Nations Model Double Taxation Convention between Developed and Developing Countries

62. Mr. Louie reminded the Committee that, in 2015, he had been asked to give a presentation to the Committee on the changes to the United States Model Income Tax Convention relating to the modified limitation on benefits clause. During the thirteenth session, it had been decided that the updated United Nations Model Convention would include, as an option, a robust limitation on benefits clause based

on the clause in the United States Model Convention. Mr. Louie also reminded members that he had been asked to formulate a proposal for the Committee explaining how he would achieve that objective by working in consultation with a small group of experts, including Ms. Peters, Mr. Mvula and Mr. Lara. Having proceeded in that manner, he had concluded that the most suitable option for the United Nations Model Convention would be to have an article with the limitation on benefits and principal purpose test clauses and to explain other possible options in the commentary.

63. Mr. Louie explained that there were significant benefits to quoting the commentary on the OECD Model Convention related to the limitation on benefits clause, because, in drafting the detailed clause, OECD had quoted the United States Model Convention, standardized expressions and made it uniform with all other sections of the commentary. Quoting the OECD Model Convention, according to Mr. Louie, ensured consistency between the two Model Conventions.

64. There were different views about the proposed article on limitation on benefits. Some members were of the opinion that it was a helpful tool to prevent treaty shopping and that it was important for the article to be standardized with the commentary on the OECD Model Convention, because developing countries were just as vulnerable to treaty shopping as developed countries. Other members were of the opinion that the rules as proposed might be too detailed to be easily administrable in many countries and may give rise to loopholes.

65. Mr. Louie explained the proposed new article 29, noting that the proposed text did not refer to special tax regimes, but that the commentary afforded countries the opportunity to do so (under paragraph 33).

66. He emphasized that the Committee would have to decide whether it would like to include a rule to address collective investment vehicles in article 29 (2) (g). After some discussion, the Committee recommended that the next membership of the Committee should further discuss that issue, including with reference to paragraphs 6.8 to 6.34 of the commentary on article 1 of the OECD Model Convention. The Committee agreed to temporarily include language in article 29 (2) (g) to the effect that countries could address the taxation of collective investment vehicles in their tax treaties.

67. The term "collective investment vehicle" was consequently removed from paragraph 7 of the commentary on article 29. The term may be reincluded following relevant recommendations by the next membership of the Committee.

68. The following modifications were also requested by participants:

(a) In paragraph 7 (e) (i) (B), reference should be made to the new article 12A (Fees for technical services), which was accepted by Mr. Louie;

(b) Taking into account the discussion on base erosion and profit shifting and the OECD Multilateral Convention to Implement Tax Treaty-related Measures to Prevent Base Erosion and Profit Shifting, and given that the majority of countries would probably use only the principal purpose test, article 29 should have options A and B to provide further clarity. Article 29 A would be the detailed limitation on benefits clause, and article 29 B would be the principal purpose test clause. The issue was submitted to a vote, and the majority decided that both the limitation on benefits and the principal purpose test clauses would be kept in the same article;

(c) There was further debate as to whether article 29 should be separated into three sections, numbered I, II and III. Under this proposal, section I would be entitled "Limitation on benefits" and comprise paragraphs 1 to 7. Section II would comprise only paragraph 8 and be entitled "Exempt permanent establishment",

because the entity is regarded to be subject to tax test. Section III would be entitled "Principle purpose test" and comprise only paragraph 9. After some discussion on the issue, it was decided that it would not be necessary to break the article into sections and that the commentary should make it very clear that paragraph 9 was the paragraph to be applied if a country were to decide not to apply a limitation on benefits clause, or to be used in connection with the limitation on benefits clause. Most members thought that the commentary should clarify the interrelation between paragraphs 1 to 7, paragraph 8 and paragraph 9, without the need to break up the clause into parts.

69. Another issue was raised with respect to paragraph 14 of the new proposed commentary on recognized pension funds. One member mentioned that the text proposed was the draft as proposed in the OECD Model Convention, which was problematic for the countries that did not consider pension funds to be separate persons for tax treaty purposes. Since the United Nations Model Convention does not allow for reservations and observations, the member proposed adding alternative language to acknowledge that adding "recognized pension funds" to article 3, as proposed in paragraph 14 of the commentary on article 29, could cause difficulties for the laws of countries in which pension funds are not considered to be separate persons for tax treaty purposes, and that those countries may be willing to consider deleting that language from their treaties. That member also suggested that those countries may also want to include the definition of "pension funds" in the residence article (article 4) in order to address the taxation of pension funds somewhere in the treaty and recognize that such funds are subject to tax in the source country.

70. After some discussion, Mr. Louie agreed to work with some Committee members and OECD in order to draft alternative language that would address the concerns of countries that did not consider pension funds to be persons for treaty purposes. The group proposed new language recognizing that some countries did not consider pension funds to be persons for treaty purposes. The provision states that those countries do not need to include pension funds within the scope of article 29. It notes that those States should ensure that pension funds are considered to be resident entities within the scope of article 4 (1). A consequential change was proposed to article 4 (1), through the introduction of a new paragraph 7 to the commentary on article 4 (1). The proposed text was approved by the Committee.

71. Mr. Louie and others suggested that the next membership of the Committee should examine more deeply the taxation of pension funds and reassess such taxation under the United Nations Model Convention.

72. One member asked Mr. Louie to include a reference to article 14 in paragraph 7 (e) (i) (B) (2) concerning the definition of "equivalent beneficiary". There was discussion as to whether article 14 applied only to natural persons or also to other entity forms (whether article 14 might apply to any kind of resident). According to Mr. Louie, a different membership of the Committee had debated the issue previously and had not been able to reach an agreement.

73. Ms. Kana, who had written a paper for consideration in the broader debate on whether to keep or remove article 14, recalled that, during that discussion, opinion had been divided almost equally, with about half of those present being of the understanding that article 14 related only to natural persons and the other half taking the view that it also addressed corporate entities and service providers. Mr. Sollund, who was also a Committee member when those discussions took place, suggested that a sentence should be added to the commentary on article 29 (7) (e) (i) (B) (2), stressing that, if countries take the view that article 14 does not apply only to natural persons, they should say so when including this

paragraph in their treaties and include a reference to article 14 in article 29 (7) (e) (i) (B) (2) of the bilateral treaty. Mr. Louie accepted Mr. Sollund's proposition and added the following sentence to the commentary: "States that share the view expressed in paragraph 11 of the commentary on article 14 may wish to add in subclause (B) (2) of subdivision (e) (i) a reference to article 14."

74. Mr. Louie explained the commentary, reminding participants that the Committee had chosen not to propose incorporating the simplified version of the limitation on benefits provision in the United Nations Model Convention. All references to the simplified limitation on benefits provision had therefore been deleted.

75. There was a longer debate with respect to subparagraph (d) entitled "Affiliates of publicly traded companies and entities". One issue that arose was that the title refers to "affiliates" whereas the text in the commentary refers to "subsidiaries". It was ultimately agreed to keep the title and text as originally proposed, highlighting that the use of the term "affiliate" in the heading was not intended to imply any deeper relationship between the two terms.

76. With regard to the revision of the text of paragraph 77 of the commentary, Mr. Louie and others suggested one small modification, which would more adequately reflect the real meaning of the paragraph, to read: "The determination of substantiality is based upon all the facts and circumstances, including the comparative sizes of businesses in each contracting State." According to Mr. Louie, the change had been proposed in consultation with the secretariat of OECD and would lead to a consequential change also in the text of the revised version of the commentary on the OECD Model Convention. As a result, the revised text of paragraph 77 could still be cited as a direct quote from the revised version of the OECD Model Convention and commentary.

77. Paragraphs 4 to 8 were approved by the Committee without further debate. The final provision submitted for consideration and approved by the Committee was a consequential amendment to the quotation of paragraph 71 of the commentary on article 24 of the OECD Model Convention, in order to take into account the new introduction to article 29 (8). The quotation of paragraph 71 of the commentary on article 24 was amended in order to address triangular cases in which none of the States have considered an item of income to be subject to tax.

78. Other modifications included the inclusion of a reference to the new article 12A on the taxation of fees for technical services in article 29 (7) (e) (i) (B) (1). All other language contained in the paper on a new article 29 (Entitlement to benefits) was approved without further discussion.

79. Mr. Louie thanked the Subcommittee for its work and the secretariat for its assistance, and declared the work on article 29 to have been finalized for the present revision of the United Nations Model Convention. Mr. Louie was in turn thanked for his efforts.

H. Suggestions for Committee procedures

80. The Secretary of the Committee introduced a note prepared in response to a request by some members during the thirteenth session of the Committee for the secretariat to produce a short note on the procedural issues that might usefully be discussed at the fourteenth session in order to assist the next membership of the Committee.

81. In particular, an issue that had arisen at the previous session was how minority views were to be presented in the commentaries on the Model Convention. It was

noted that, very early in the history of the Committee, an understanding had been expressed that members should strive to achieve consensus, but, when that was not possible, a minority view would be presented in the commentaries. There was a discussion regarding the acceptance of minority views. A related issue arose as to whether members of the Committee not physically present should be allowed to vote on issues that were voted upon in the meeting. Even if they could not vote on issues, there was an underlying issue as to whether their views could be represented and taken into account in the debate.

82. During the thirteenth session of the Committee, it had been decided, for the purposes of the term of the current membership, that Committee members who were not physically present at a session of the Committee should not be allowed to vote, but, if their views were made sufficiently clear to other members of the Committee, they may and should be taken into account in the discussions. The issue was whether those rules would be recommended to the next membership of the Committee.

83. The Secretary gave a brief overview of the paper so as to assist an initial discussion. In the note, it is stated that the Committee appears to have considerable scope as to its procedural rules. At its first session in 2005, the representative of the Secretary-General noted that, since the Committee had not become an intergovernmental body, it was not subject to the rules of procedure pertinent to such bodies.

84. The Secretary proposed that a compendium be produced for the next membership of the Committee, reflecting some initial ideas to be discussed by that membership. One member was of the view that such a paper, together with the views of the members, should be a living document and updated frequently, as required by members.

Treatment of minority views

85. Most members were of the opinion that minority views should be accepted, including single member views, because that view may represent the view or practice in several other countries that were not represented in the Committee. For those who expressed support for that approach, the purpose of the Model Convention was to reflect the different experiences and approaches that exist in international practice, in order to guide developed and developing countries.

86. Others were of the opinion that including both majority and minority views may be confusing and that not all views could feasibly be reflected in the Model Convention. Those members felt that the Committee should be able to reach a consensus decision, which might not be supported by every member, but which represents the main viewpoint taken by the Committee.

87. One member thought that the issue was not whether but how minority views should be reflected. For that member, the consensus decision should be provided in the body of the commentaries, and minority or alternative views should be explained after the consensus or majority opinion in order to provide substance to each position reflected in the commentaries.

88. The Committee felt that the issue should be included in the provisional agenda for the next session. One member recommended that a subcommittee on procedural issues should be formed, perhaps including some former members, under the next membership of the Committee. The Secretary considered that the idea of a subcommittee or working group should be considered by the next membership of the Committee. Owing to time constraints, the Chair requested the members to send

their written comments to the secretariat following the meeting, in order to form a basis for further discussion by the next membership of the Committee.

I. Mutual agreement procedure — dispute avoidance and resolution

89. Mr. Mensah, on behalf of the Coordinator of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution, Kim Jacinto-Henares, who could not be present at the session, presented the issues for final consideration by the Committee.

Changes to the United Nations Model Double Taxation Convention between Developed and Developing Countries

90. Mr. Mensah introduced the first topic for consideration by the Committee: a proposal to add a sentence to paragraph 4 of article 25, alternatives A and B, to explicitly address the possibility of non-binding dispute resolution procedures, as well as a proposed new commentary on article 25 to explain the textual change. The proposal was the outcome of the meeting of the Subcommittee on the Mutual Agreement Procedure — Dispute Avoidance and Resolution held in February, in Brussels, with logistical support from the European Commission. Mr. Mensah thanked the European Commission for that support.

91. The change to the text of the Model Convention was rejected by the majority of the Committee members present and was not incorporated into the Model Convention itself. After some discussion, it was agreed to address that possibility in the commentary on article 25 in a new paragraph 41.1. The Committee approved the new revised language of the commentary.

Approval of the outline of the handbook on dispute resolution and of the outline of the revised version of the guide to the mutual agreement procedure

92. Mr. Mensah introduced the topic and requested Ms. Falcão to provide further input. She reminded the Committee that, during the thirteenth session, there had been wide support from the members of the Committee for a handbook and a guide, for emerging and developing countries in particular, on how to avoid and resolve cross-border tax disputes. This is an approach that the Committee had already adopted successfully in the area of transfer pricing and tax administration and was being asked to consider in the area of extractive industries.

93. The Secretary of the Committee noted that the main difference between the two products, as originally conceived, would be that the handbook on dispute resolution would be aimed at countries that did not yet have much experience with the mutual agreement procedure and other forms of dispute resolution, whereas the guide on the mutual agreement procedure would be directed at countries that already had such experience.

94. The Committee approved the outlines of the handbook and the guide, highlighting that such approval demonstrated that the Committee saw the need for those products to be concluded and approved the Subcommittee's line of work. It was noted that, since no text had yet been developed, further approval would need to be sought from the next membership of the Committee on the text and substance of the handbook and the guide and on how the two documents should best relate to each other.

Further work by the Subcommittee

95. It was suggested that some members of the Subcommittee might be asked to continue working, in their personal capacity, in a small group under the coordination of the International Tax Cooperation Unit of the secretariat, to further develop the handbook and the guide, for consideration at the fifteenth session by the next membership of the Committee. The Committee approved that approach and requested the secretariat to lead the work with a small group of lead authors drawn mostly from the Subcommittee. Once the Committee had agreed on the guidance documents, capacity development activities could follow in this area, on the basis of those documents.

Changes to the United Nations Model Convention derived from the final report on action 14 of the Group of 20/OECD Action Plan

96. Mr. Mensah asked a representative of OECD, Jacques Sasseville, to explain the proposed changes to the United Nations Model Convention following the changes made to the OECD Model Convention derived from action 14 of the Group of 20/OECD Action Plan. Mr. Sasseville recalled that the proposed changes to the United Nations Model Convention had been originally suggested in 2016 and that the changes to the OECD Model might be relevant for the United Nations Model Convention and provide useful clarifications or additional explanations. He presented a paper on changes to the United Nations Model Convention derived from the final report on action 14 of the Group of 20/OECD Action Plan, highlighting that the paper was divided into four parts. Part 1 refers to the recommendations of the Subcommittee for changes to the commentary on the United Nations Model Convention, which should substantially change the commentaries; part 2 relates to changes that could either be made to the commentaries on the United Nations Model Convention or incorporated into the guide on the mutual agreement procedure; part 3 refers to the changes that the Subcommittee recommended be incorporated into the guide, which would therefore mean that further changes in the United Nations Model Convention would not be required; and part 4 refers to changes that the Subcommittee did not consider to be relevant for the United Nations Model Convention or the guide. Mr. Sasseville led the discussion on parts 1 and 2 of the paper. Parts 3 and 4 were not put to the Committee's consideration because they would not lead to substantive modifications to the commentary on the United Nations Model Convention. Those parts could be considered within the context of the guide, at a later stage, or not at all.

Changes to the commentary

97. The Committee approved the following changes to the commentary on the United Nations Model Convention:

(a) The first part of paragraph 9 of the commentary on article 25 was amended;

(b) The quotation of paragraph 26 of the OECD Model Convention (with adaptations) that is currently found in paragraph 9 of the commentary on article 25 of the United Nations Model Convention was amended so that, in the last sentence of that paragraph, "should be made clear" would now read "must be made clear";

(c) Changes were made with respect to the treatment of interest and penalties in a mutual agreement procedure in order to reflect legal interpretations and policy considerations that are equally relevant for the United Nations Model Convention and for the OECD Model Convention, in which they will also be

reflected. The Committee approved the new language proposed in the discussion paper as follows:

(i) Replacing the quotation of paragraph 4 of the OECD Model Convention with the new version of the paragraph that will be included in the OECD Model Convention. This paragraph is to be included in paragraph 4 of the commentary on article 2 of the United Nations Model Convention;

(ii) Replacing the quotation of paragraph 49 of the OECD Model Convention that is currently included in paragraph 9 of the commentary on article 25 of the United Nations Model Convention with the new paragraphs 49 to 49.3 that will be included in the OECD Model Convention;

(d) The incorporation of new paragraphs 6.1 to 6.3 of the changes to the commentary on the OECD Model Convention proposed in November 2016, even though it was recognized that the final version of those paragraphs, which are expected to be introduced in the OECD Model, is not yet available;

(e) The incorporation of paragraphs 47 and 48, which are proposed to be incorporated into the OECD Model Convention, in the commentary of the United Nations Model Convention to deal with the policy considerations related to the suspension of collection of taxes;

(f) The Committee approved the amendment to paragraph 9 of the commentary on article 25 of the United Nations Model Convention, which entails:

(i) Adding the new paragraphs 37.1 to 37.5 immediately after paragraph 37 to address the issue of multilateral mutual agreement procedures and advance pricing agreements;

(ii) Amending paragraph 9 of the commentary on article 25 by replacing paragraph 52 with a new paragraph;

(iii) Amending paragraph 9 of the commentary on article 25 by replacing paragraph 55 with paragraphs 55 to 55.2.

98. Mr. Mensah thanked the Subcommittee for its work and encouraged the relevant members to continue working on the development of the handbook and the guide, under the coordination of the secretariat, until the next session of the Committee.

J. Article 8 (Shipping, inland waterways transport and air transport)

99. The Coordinator of the Subcommittee on article 8, Mr. Krysiak, opened the discussion by inviting Mr. Sasseville to present the proposed modifications related to international transport that are to be included in the new version of the OECD Model Convention and commentaries, which might also be applicable to the United Nations Model Convention.

100. Mr. Sasseville highlighted that the original draft for discussion had been released in 2013 and that comments had been received primarily from the shipping industry and the International Air Transport Association. In the light of those comments, it had been decided to simplify the article, reducing it from four paragraphs to two and changing the taxing State in paragraph 1 from the State in which the place of effective management of the enterprise is situated to the State of which the enterprise is a resident. Paragraph 2 of the new version of the article had the same language as paragraph 4 of the old version.

101. Current paragraphs 2 and 3, referring to the profits from the operation of boats engaged in inland waterways transport, would be removed from the Model

Convention, and no further reference would be made to inland waterways transport as distinguished from the operation of aircraft and ships in international traffic.

102. During the analysis of whether the change should be incorporated into the United Nations Model Convention, it was highlighted that article 8, alternative A, follows the OECD Model Convention, whereas alternative B does not, as it contains the following special rule for the source taxation of profits from ships operated in international traffic: "unless the shipping activities arising from such operation in the other contracting State are more than casual". In the context of article 8, aiternative A, Mr. Sasseville was of the opinion that it still made sense to change the rule on the State in which profits are taxable to apply to the State of which the enterprise is a resident. However, alternative B contains the OECD provision on inland waterways transport according to which profits shall be taxable in the contracting State in which the place of effective management of the enterprise is situated. According to him, it would make more sense to eliminate that paragraph and remove the reference to inland waterways transport. Consequential changes were proposed to article 6 (2) (deletion of the reference to "boats"), article 13 (3) and article 22 (3).

103. The reference to "boats" was eliminated from the text. For those who consider that a "ship" is different from a "boat", it was proposed to include new language in the commentary that a ship refers to any type of vessel engaged in international transport, thereby clearly including boats, barges and other modes of transportation.

104. A consequential change was also proposed to article 15 (3), which can create unintended difficulties by giving rise to triangular situations.

105. He indicated that this anomaly would be addressed by a textual change, which would make the income from such activities taxable only in the State of residence of the employee. In order to make the new provision work, the definition of "international traffic" would have to be changed.

106. With regard to a proposed replacement of "place of effective management" in article 8 with a "place of residence" test, after some discussion, including about uncertainties with regard to the current terminology, there was no opposition to the modifications proposed by the Subcommittee on article 8 (1) and the consequential changes. Changes to existing paragraphs 7 and 8, and the addition of a new paragraph 8.1 explaining the change, were also approved.

107. The next changes considered were: (a) the elimination of the reference to "inland waterways and transport" in the title; (b) a change to paragraph 1 to mention the taxable event at the State of the contracting State; (c) the deletion of paragraphs 2 and 3, as explained in paragraph 101 of the present report; and (d) the renumbering of the paragraphs. The Committee members approved those modifications.

108. Mr. Sasseville made a further proposal with respect to the meaning of the term "may be taxed" to clarify that the expression does not signify that the source State cannot tax the income in the place in which the activity takes place. This addresses an issue that has arisen in courts. The suggestion was approved, pending further advice from the secretariat as to the best place to put the clarification in the United Nations Model Convention, given that it is a general issue that is not confined to article 8.

109. A further proposal was made to update paragraphs 2 and 5-8 of the general considerations in the commentary on article 8 in order to reflect the deletion of the "place of effective management", to record the history of article 8 in the United Nations Model Convention and to reflect the possibility of covering other forms of transport, such as rail transport, therein. Following the deletion of "inland waterways transport" from the main text of the Model Convention, paragraph 8 of

the commentary on article 8 was moved and renumbered as paragraph 15.1, to appear after paragraph 15, which specifically deals with inland waterways transport. The changes were approved by the Committee without further modifications.

110. In proposed paragraph 11.1, the minority view regarding "ancillary activity", as had previously been agreed by the Committee, was reflected. Some countries raised the issue that the last sentence in proposed paragraph 11.1 ("Conflicting interpretations that may arise in such cases should be addressed bilaterally") should be removed. The secretariat noted its view that that sentence had been deleted at the thirteenth session, and it was agreed.

111. It was argued that the new proposed paragraphs 15 and 15.1 of the commentary could create a situation in which cross-border inland waterways transport is not subject to tax in either State, unless the enterprise has a permanent establishment in the other State. Mr. Sasseville stressed that some of the language in paragraph 15 would not work for article 8, alternative B. New language was proposed to take into account some of the comments of members. In addition, the reference to inland waterways transport would apply only with respect to article 8, alternative A, and not to alternative B. Paragraph 15.1 was also changed in accordance with the paper on changes to the United Nations Model Convention dealing with the operation of ships and aircraft in international traffic.

112. All other proposed changes and consequential changes presented in the paper were approved by the Committee without any further amendments or comments. Mr. Krysiak and the Subcommittee were thanked for their work.

K. Capacity-building

113. Dominika Halka and Harry Tonino of the secretariat provided an update on capacity-building and other related activities implemented by the Financing for Development Office since the thirteenth session. Ms. Halka briefed the Committee on the work performed in the context of the Platform for Collaboration on Tax. She described the progress made with respect to: (a) the development of toolkits to assist developing countries in addressing base erosion and profit shifting; and (b) the implementation of medium-term revenue strategies to support domestic resource mobilization for investment in sustainable development.

114. Ms. Halka noted that progress had also been made on the preparations for the first global conference under the Platform, to be held in February 2018 in New York, under the theme of "Taxation and the Sustainable Development Goals". She introduced the draft concept note and agenda for the conference. Mr. Tonino provided an update on activities implemented in the context of the United Nations capacity development programme on international tax cooperation. He noted that the work on the update of the United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries was expected to be released in mid-2017. In addition, he noted that a practical portfolio dealing with base-eroding payments of rents and royalties had been developed to complement the portfolios on services and interest payments.

115. Mr. Tonino reported on past capacity-building events, including: (a) a course on double tax treaties held in Asuncion in cooperation with the Inter-American Center of Tax Administrations; and (b) a workshop on double tax treaties and base-eroding payments held in Nairobi in cooperation with the African Tax Administration Forum and with the financial support of the Government of Italy. It was also noted that work had started on the development of two online courses on transfer pricing and a Spanish version of the course on double tax treaties.

116. Lastly, Mr. Tonino described the progress made and the next steps to be taken in the implementation of country-level technical cooperation projects in a number of countries, namely: (a) Angola, Paraguay and Trinidad and Tobago, in tax treaty negotiation and administration; (b) Ecuador, in transfer pricing; and (c) the Dominican Republic, in tax incentives.

L. Other matters

117. The Committee noted the central importance of ensuring that key products of the Committee's work, such as the United Nations Model Convention, the Manual on Transfer Pricing and the Handbook on Selected Issues in the Taxation of the Extractive Industries for Developing Countries, were translated into all official United Nations languages in order to maximize effectiveness, and called for efforts, including by potential funders, to ensure that this would be done as quickly as possible, with the required quality.

Chapter IV

Matters calling for action by the Economic and Social Council

Draft decision recommended for adoption by the Council: Venue and dates of and provisional agenda for the fifteenth session of the Committee

118. The Committee of Experts on International Cooperation in Tax Matters recommends that the Economic and Social Council review and adopt the following draft decision:

Draft decision
Venue and dates of and provisional agenda for the fifteenth session of the Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council:

(a) Decides that the fifteenth session of the Committee of Experts on International Cooperation in Tax Matters will be held in Geneva from 17 to 20 October 2017;

(b) Approves the following provisional agenda for the fifteenth session of the Committee:

1. Opening of the session by the representative of the Secretary-General.
2. Election of the Chair and Vice-Chairs of the Committee.
3. Remarks by the Chair of the Committee.
4. Adoption of the agenda and organization of work.
5. Discussion of substantive issues related to international cooperation in tax matters:
    (a) Procedural issues for the Committee;
    (b) Issues related to the updating of the United Nations Model Double Taxation Convention between Developed and Developing Countries:
        (i) Base erosion and profit shifting: updates in relation to:
            a. Articles 1 and 5, including:
                i. The treatment of issues related to insurance and reinsurance issues;
                ii. Other issues related to permanent establishments;
            b. Article 13 (Capital gains): the application of paragraphs 4 and 5;
        (ii) Article 12 (Royalties): possible amendments to the commentary on article 12 in relation to software-related payments;
    (c) Other issues:
        (i) Possible update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
        (ii) Possible update of the Extractive Industries Handbook;

(iii) Possible update of the Manual for the Negotiation of Bilateral Tax Treaties;

(iv) Treatment of collective investment vehicles;

(v) Mutual agreement procedure — dispute avoidance and resolution, including possible updates to the United Nations Model Double Taxation Convention and its commentaries and the guide on the mutual agreement procedure, as well as further work on the handbook on dispute resolution;

(vi) Hybrid entities;

(vii) Capacity-building;

(viii) Environmental tax issues of relevance to developing countries;

(ix) Tax consequences of the digitalized economy — issues of relevance for developing countries;

(x) Taxation of development projects;

(xi) Other matters for consideration;

6. Provisional agenda for the sixteenth session of the Committee.

7. Adoption of the report of the Committee on its fifteenth session.